

BOARD OF SUPERVISORS

Brown County



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LAND CONSERVATION SUBCOMMITTEE

Norbert Dantine, Jr., Chair
Dave Kaster, Vice Chair
Bernie Erickson, Dave Landwehr, Tom Sieber, Norb Vande Hei

LAND CONSERVATION SUBCOMMITTEE

**Monday, March 25, 2013
6:00 p.m. (PD&T to Follow)
Room 161, Ag & Extension Center
1150 Bellevue Street**

- I. Call Meeting to Order.
- II. Approve/Modify Agenda.
- III. Approve/modify minutes of Land Conversation Subcommittee of February 25, 2013.

Comments from the Public

1. Land and Water Conservation Department Budget Update – To be distributed at mtg.
2. Request from the City of Green Bay to adopt Brown County's Animal Waste Ordinance.
3. Interim Director's Report.
4. Such other matters as authorized by law.
5. Adjourn.

Norb Dantine, Jr., Chair

Notice is hereby given that action by the Committee may be taken on any of the items which are described or listed in this agenda. Please take notice that it is possible additional members of the Board of Supervisors may attend this meeting, resulting in a majority or quorum of the Board of Supervisors. This may constitute a meeting of the Board of Supervisors for purposes of discussion and information gathering relative to this agenda.

**PROCEEDINGS OF THE BROWN COUNTY
LAND CONSERVATION SUBCOMMITTEE**

Pursuant to Section 18.94 Wis. Stats., a regular meeting of the **Brown County Land Conservation Subcommittee** was held on Monday, February 25, 2013 in Room 161 of the UW Extension Center, 1150 Bellevue Street, Green Bay, WI

Present: Chair Dantine, Supervisors Kaster, Erickson, Sieber, Landwehr
Excused: Norb Van De Hei
Also Present: Jim Jolly, Jon Bechle, Executive Streckenbach

I. Call Meeting to Order:

The meeting was called to order by Chairman Norb Dantine at 6:00 p.m.

II. Approve/Modify Agenda.

Motion made by Supervisor Kaster, seconded by Supervisor Landwehr to approve. Vote taken. MOTION CARRIED UNANIMOUSLY.

III. Approve/modify minutes of Land Conversation Subcommittee of November 26, 2013.

Motion made by Supervisor Sieber, seconded by Norb Vande Hei to approve. Vote taken. MOTION CARRIED UNANIMOUSLY.

Comments from the Public – None.

1. Land and Water Conservation Department Budget Update.

Land and Water Conservation Interim Director Jim Jolly informed that they had finished ahead for the year about \$37,000.

Motion made by Supervisor Erickson, seconded by Supervisor Landwehr to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY.

2. Land & Water Resource Management Plan Annual Report/Annual Department Report to Land Conservation Committee.

Jolly referred to the 2012 Annual Report /2013 Work Plan, located in the packet, and informed that his office had to provide a copy to the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) every year for the money that they give their department. They had a five year Land and Water Plan which set their goals for five years and reported on how they did. They had a very good year this year. A portion of the document captured the essence of what they had done which was they broke out in the seven areas that they spent the most time in.

- **Working Land Initiative:** Jolly clarified that only 10 of the 80 farm inspections found things that really needed to have engineering services on. The other 70 were not that bad in this

program, landowners were doing things right. The program brought in \$449,000 in state tax credits. They set a policy within their department that they were going to have everyone remain eligible for the program until staff was out there, had done a farm inspection, had worked with landowners and were told they didn't want it.

- **West Shore Pike Habitat Project:** They had a great year this year, putting in almost nine acres of spawning marsh. They had eight contracts.
- **Baird Creek Project:** Jolly informed that they had extended this project one year; because of this, they targeted another seven miles of stream and 30 acres of buffers.
- **Agronomy Services:** Their department continued to be a leader in the State. No one has the amount of nutrient management plans that they had. Staff did a great job.
- **Annual Tree Program:** They sold over 15,000 seedling trees. It was revenue for them.
- **Engineering Services:** They handled animal waste ordinance permits; they work with landowners who were putting in new feedlots and manure storages.
- **Wildlife Damage Program:** They had a good year and it was a continued program for them every year; they had 18 participants that cooperated with them. They issued 5-deer shooting permits, 2-turkey shooting permits and 11 damage claims.

Erickson questioned if their department had enough staff, he didn't want to see programs suffer. He questioned if they should bring on a part-time person. Jolly responded that he was in process of hiring someone part time to do some work on the monitoring of the West Shore Pike Habitat Project. He informed that they would not be adding more staff unless they engage in an "Adaptive Management" pilot program with the Green Bay Metropolitan Sewerage District. At that point they would handle what the prior staff handled. Jolly added that in the interim they were working with the Lean Coordinators and they were looking at increasing their internal efficiencies. Then they will be at a point where they could assess what they need, they were not there yet.

Dantinne questioned for the West Shore Pike Habitat Project, could they use perch as bait. Jolly responded that the reality was that the alewives and the gobies eat more perch than the northerns did. It had been documented for years that the predator population was way down in the bay and because of that there was an unbalance. They needed to get the predators up.

Motion made by Supervisor Erickson, seconded by Supervisor Sieber to approve. Vote taken.
MOTION CARRIED UNANIMOUSLY.

3. **County Land & Water Resource Management Plan Extension Request.**

Jolly informed that what they just approved was a 5-year work plan. They were not prepared to do another one at this point. The reason being was EPA came down with a total maximum daily load for all the waters in Brown County and they had to come up with a plan on how they were going to accomplish getting at those levels. The only way they were going to do that was with working with the Green Bay Metropolitan Sewerage District to create a pilot project to see what it will actually take on the landscape to reduce the in stream phosphorus levels down to the targets. They hadn't actually done that yet in their office. They had a lot of projects over the years and spent a lot of money here and there throughout the county but it wasn't whole scale implementation over a lot of acres in a concentrated area. They have to see what will work. He told DATCP that once that happened and they gave them 4-years they will be able to tell them what their work load was going to be from here on out. If that did work, it was going to go viral and they were going to take this to the whole county. Then DATCP would be adding staff to get

the work done. But they had to have some assurances that their department can get it done. They were not at a point here as a staff to say that they were going to follow a specific plan for the next five years when they had this whole thing rolling out. They were just asking DATCP for an extension and they were agreeable based on the information Jolly gave them but he needed the committee's approval.

Motion made by Supervisor Landwehr, seconded by N. VandeHei to approve the Land and Water Conservation Board County land and Water Resource Management Plan Extension Request. Vote taken. MOTION CARRIED UNANIMOUSLY.

4. **NRCS Contribution Agreement.**

Jolly stated that he did not have an agreement for the committee but explained that Dean Sylla, Area Agricultural Engineer from Natural Resources Conservation Service (NRCS) was present. Jolly had been working with Sylla's supervisor Assistant State Conservationist Ty Larson down in the Appleton office on this contribution agreement. Jolly circulated a map showing parcels that were in the working lands initiative and in the part of the county where the contribution agreement would be in effect. How it would work was NRCS had a program now, a considerable amount of money, to put in conservation practices. Jolly went downtown and talked to the Executive and Director of Administration Brent Miller and stated his concern. The county would be working in the same area as NRCS but charging \$42 an hour. The county was trying to build relationships in the rural community and he could see that this would not be good.

What they decided, because this was a high priority area, the most concentrated area in Working Lands enrollment, and was a high priority for NRCS, was that they worked out an agreement that NRCS would go in and do the planning and the contracting, get the stuff on contract with their working lands people and they would sign a contribution agreement that would pay the county to do the technical services. Jolly asked that Sylla be present to show that there was a new cooperative effort, something above and beyond, going on with the county and NRCS. He believed that this was how government should work. They both had needs, it was a perfect mesh.

Sylla stated that he worked a lot with county staff. They had quite a bit of conservation cost sharing available in targeted areas as well as land owners interested in doing the work. They had a huge work load coming up and they could certainly use Brown County's help to get the work done.

Jolly stated that what this boiled down to was the committee set a \$42 an hour engineering service fee in last year's budget for working lands and it would require the committee to waive that fee for a portion of the county of the contribution agreement. Instead of the landowner paying the county, NRCS will. All the planning time that NRCS will spend, the county would have had to spend. The county will take their agronomy staff and redirect them to other parts of the county. They will get a lot more done in a lot quicker period of time than anticipated. The boundaries would be made up by watershed areas. Jolly stated that he would recommend that the committee change the policy, it was a great deal for the landowner and for the county.

Jolly informed that the fees were \$31 an hour and NRCS would pay 75% of that. However, when looking at the figure, the amount of time that NRCS would be spending in the watershed would save the county \$30,000 in staff time. They should come out about perfect. They were taking a lesser amount but saving on the planning time.

Motion made by Supervisor Erickson, seconded by Supervisor Sieber to waive the fees of \$42 an hour in the areas of where NRCS would be working. Vote taken. MOTION CARRIED UNANIMOUSLY.

5. **Interim Director's Report.** No report, no action.
5. **Such other matters as authorized by law.** None.
6. **Adjourn.**

Motion made by N. Vande Hei, seconded by Supervisor Landwehr to adjourn at 6:26 p.m. Vote taken. MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Alicia A. Loehlein
Recording Secretary

From: Jolly_JR
Sent: Monday, March 04, 2013 3:14 PM
To: 'Jim Mueller'
Cc: District Two; District One; Ruenzel_JM; 'Tom Sieber'; Bechle_JE
Subject: RE: Chapter 26 - Animal Waste Management

Hi Jim,

Brown County Land & Water Conservation Dept fully supports your decision to grant the County authority to administer its animal waste management ordinance (chapter 26) within the City limits of Green Bay. I want to thank you for conducting a thorough review of our ordinance language as well as the old AG opinion which defined the limits and extent of County authority in administering ordinances in relation to incorporated areas. We agree that it is appropriate to amend our ordinance to reflect the changes you suggest and will work with our Corporation Counsel to that effect.

Thanks,

Jim

Jim Jolly
Interim Director
Brown County Land & Water Conservation Dept.
(920)391-4635

From: Jim Mueller [mailto:JimMu@greenbaywi.gov]
Sent: Monday, March 04, 2013 10:42 AM
To: Ruenzel_JM; Jolly_JR
Cc: District Two; District One
Subject: Chapter 26 - Animal Waste Management

Hello all,

The City is looking to adopt your animal waste management ordinance (chapter 26). After reviewing your ordinance and Hobart's (which basically copy pastes yours and then grants the County authority to enforce it within Hobart's boundaries). I think the cleanest way for GB to accomplish its goal is to pass a resolution granting the County the authority to enforce its ordinance within the City limits of GB. I don't think it is wise to put an enforcement ordinance on our books which we do not enforce. I have ran this by Ald. De Wane and he is satisfied with it. I'm hoping that the County is willing to take on this additional duty, as the City does not have the staff, expertise, or permitting process required. I think there are only a handful of farms in the City of GB.

The County's ordinance currently states that it can only be enforced in unincorporated areas of the county (even though it is currently being enforced in Hobart). I found that the reason for this restrictive language is due to an old AG opinion that was written when the law was amended. Basically, it concludes that a County cannot force this type of ordinance on a municipality, but the municipality can create one if they like. I have attached that AG opinion for your viewing pleasure. Because of this I think it would be appropriate for the County to amend chapter 26.06 to read as follows:

26.06 APPLICABILITY. This ordinance applies only in unincorporated areas of Brown County *and incorporated areas of Brown County which have delegated such authority to Brown County.*

This would clean up the issue of the County enforcing its ordinance within GB and Hobart and still comply with the law (in my opinion). Let me know your thoughts on this.

Jim Mueller
Assistant City Attorney
City of Green Bay
Phone: (920) 448-3080
Fax: (920) 448-3081
jimmu@greenbaywi.gov

1988 WL 483389 (Wis.A.G.)

Office of the Attorney General
State of Wisconsin

OAG 18-88

April 29, 1988

CAPTION: A county ordinance passed under section 92.11, Stats., may be applicable to incorporated as well as unincorporated areas of the county, whereas a county ordinance passed under section 92.16 is applicable only in the unincorporated areas of the county.

Mr. Patrick J. Faragher
Corporation Counsel
Washington County Courthouse
Post Office Box 1986
West Bend, Wisconsin 53095-7986

Dear Mr. Faragher:

You have asked for my opinion whether ordinances adopted by counties pursuant to sections 92.11 and 92.16, Stats., are applicable to the incorporated as well as the unincorporated areas of a county. Both statutes were recently amended by 1987 Wisconsin Act 27.

In considering the applicability of the county's ordinances, the starting point is the rule stated in *State ex rel. Teunas v. Kenosha County*, No. 86-1425 (February 11, 1988): '[T]he powers of the county boards of supervisors are limited to those which are conferred by the legislature . . .' Slip op. at 4. The court also stated in its slip opinion at 5: 'It has consequently become well recognized that 'a county board has only such powers as are expressly conferred upon it or necessarily implied from the powers expressly given or from the nature of the grant of power.'" Town of Vernon v. Waukesha County, 102 Wis. 2d 686, 689, 307 N.W.2d 227 (1981). Stated otherwise, 'counties are creatures of the Legislature and their powers must be exercised within the scope of authority ceded to them by the state . . .' Dane County v. H&SS Dept., 79 Wis. 2d 323, 329-30, 255 N.W.2d 539 (1977) (citing *State ex rel. Conway v. Elvood*, 70 Wis. 2d 448, 450, 234 N.W.2d 354 (1975)).

Prior to amendment, section 92.11(1) provided: 'To promote soil and water conservation or nonpoint source water pollution abatement, a land conservation committee may develop proposed county ordinances for the regulation of land use and land management practices.'

As amended by section 1692ge of 1987 Wisconsin Act 27, section 92.11(1) now provides: 'To promote soil and water conservation or nonpoint source water pollution abatement, a county, city or village may develop ordinances for the regulation of land use, land management and pollutant management practices.'

As a result of the amendment, cities and villages as well as counties are authorized to develop the ordinances for the regulation of land use, land management and pollutant management practices. Even though the amendment added

cities and villages as governments that could develop the ordinances, the remainder of section 92.11 remained unchanged, including section 92.11(2)(a) which provides: 'An ordinance enacted under this section may be applicable throughout the county or to any part of the county, including both incorporated and unincorporated areas.' Also, as before the amendment, section 92.11(4) provides that no ordinance adopted under section 92.11 may take effect in any town, village or city in the county unless the ordinance is approved by referendum.

*2 Even though section 92.11(1) now authorizes cities and villages to develop the same type of ordinances that counties may adopt, the ordinances adopted by the county under section 92.11 may still be applicable to incorporated as well as unincorporated areas. To interpret section 92.11 otherwise would be to ignore subsections (2) and (4); and statutes are not to be construed in such a way that would result in rendering a part of the statute surplusage. Teunas, slip op. at 11. To give those subsections meaning, section 92.11 must be interpreted to provide that ordinances adopted by the county may still be applicable to incorporated as well as unincorporated areas; and that county ordinances must still be approved by referendum before they can be effective in towns, villages or cities.

The express language making a county ordinance applicable to the incorporated as well as the unincorporated areas is lacking in section 92.16, however. Prior to amendment, section 92.16 provided: 'A county may adopt an ordinance requiring all earthen manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county and rules of the department. The department shall adopt rules for ordinances setting standards and criteria for construction of earthen manure storage facilities.'

As amended by section 1692hm of 1987 Wisconsin Act 27, section 92.16 now provides:

Manure storage facilities. A county, city or village may adopt an ordinance requiring manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county, city or village and rules of the department. The department shall adopt rules for ordinances setting standards and criteria for construction of manure storage facilities.

In section 92.16, the Legislature has not expressly given the county authority to enact an ordinance that is applicable in incorporated areas. There is no necessary implication the county has such authority. Indeed, the implication is to the contrary because section 92.11 expressly makes the county ordinance applicable to incorporated areas while section 92.16 is silent, and because cities and villages are expressly granted the authority to enact the same type of ordinance that the county can enact.

A conclusion that the county's ordinance under section 92.16 is not applicable to incorporated areas is consistent with the statement in 56 Op. Att'y Gen. 126, 128 (1967), quoting from 20 C.J.S. Counties § 92 (1940):

Territorial limitations. A county ordinance is effective only within the boundaries of the county. Furthermore, since municipalities and counties are separate and distinct governmental entities . . . a county ordinance which involves the exercise of any of the police powers granted to municipalities cannot be effective within the limits of municipalities located within the county.

The conclusion is also consistent with the summary of the law stated in 62 C.J.S. Municipal Corporations § 114 (1949).

*3 The attorney general opinion cautioned that the general rule stated in C.J.S. is not always applicable in Wisconsin; but the opinion then cited statutes that expressly specify the areas covered by county ordinances. 56 Op. Att'y Gen. at 128. Section 92.16, however, does not contain such express language. In my opinion, an ordinance adopted by a county under section 92.16 would be applicable only to the unincorporated areas of the county.

Sincerely yours,
Donald J. Hanaway
Attorney General

**RESOLUTION AUTHORIZING BROWN COUNTY TO ENFORCE BROWN COUNTY
ORDINANCE CHAPTER 26 RELATING TO ANIMAL WASTE MANAGEMENT
WITHIN THE CITY LIMITS OF GREEN BAY**

March __, 2013

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the City of Green Bay desires to protect and promote the agricultural industry and also to promote and enhance the aesthetic conditions and general welfare of the people of Green Bay; and

WHEREAS, the City of Green Bay desires to have the design, construction, abandonment and maintenance of animal waste storage facilities, animal feed lots and nutrient management regulated within its city limits; and

WHEREAS, Brown County has adopted Brown County Ordinance Chapter 26 which regulates the design, construction, abandonment and maintenance of animal waste storage facilities, animal feedlots, and nutrient management; and

WHEREAS, the City of Green Bay desires to have Brown County Land Conservation Department enforce Brown County Ordinance Chapter 26 within the city limits of Green Bay;

THEREFORE, BE IT RESOLVED, that the City of Green Bay grants to the Brown County the authority to enforce Brown County Ordinance Chapter 26 relating to animal waste management within the city limits of Green Bay.

Adopted _____, 2013

Approved _____, 2013

James J. Schmitt
Mayor

Kris Teske
Clerk

jlm